CS Progyms Pharmaceutical Sdn Bhd v Blade Mate Industries Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(A)-366–02 OF 2016
DAVID WONG, UMI KALTHUM AND HASNAH HASHIM JJCA
12 APRIL 2017

Civil Procedure — Appeal — Appeal against judgment of High Court — Whether High Court failed to appreciate facts of case and terms of tenancy agreement between parties and come to a perverse verdict — Whether perverse verdict caused injustice to landlord by depriving it of rental properly due to it under tenancy agreement — Whether tenant required to strictly comply with terms of tenancy agreement which were clear and unambiguous

On 6 September 2010, the respondent entered into a sale and purchase agreement ('SPA') with the appellant to buy the latter's land with factory building ('the property') for RM5.4m and paid the deposit thereunder. The SPA provided that the purchase was subject to the appellant obtaining the certificate of fitness ('CF') to the property together with the building plans approved by the relevant authorities and that until such time the appellant had secured those documents, the respondent would give interest-free extensions of time to the appellant to complete the SPA and the respondent would be allowed to rent the property at a monthly rental of RM18,000 until the completion date of the SPA. Contemporaneous with the SPA, the parties executed a tenancy agreement which provided that the tenancy period was for a four months term commencing on 1 September 2010 and ending on 31 December 2010 but that the expiry date of the tenancy period 'shall be automatically extended should the SPA be extended'. When disputes arose between the parties with regard to the SPA's completion date, the appellant issued a notice to terminate the SPA. The respondent disputed the move and applied to the High Court to, inter alia, declare the termination notice as null and void and to order the appellant to specifically perform the SPA or pay damages in lieu of specific performance. On 25 July 2013, the High Court granted the respondent's application and the reliefs sought. The appellant's appeal to the Court of Appeal ('the COA') against that decision was dismissed and it was denied leave to appeal further to the Federal Court. As the COA, when it dismissed the appeal, had ordered the matter to be remitted back to the High Court to deal with the consequential reliefs arising from the High Court's decision of 25 July 2013, the High Court accordingly heard further submissions and on 13 January 2016 ordered: (a) the SPA to be completed within one month; and (b) the respondent to pay rental only for the period from December 2012–25 November 2013 for the total sum of RM180,000.

The High Court held that the respondent was only liable to pay rental until the date of its order granting specific performance (ie 25 July 2013) plus another four months from the date of that order for the purpose of completion of the SPA. No reason was given in the grounds of judgment to explain why such a decision was made. In the instant appeal, the appellant argued that the High Court's decision was wrong because since the respondent had occupied the property from September 2010 until the completion date of the SPA on 11 March 2016, it was obliged under the tenancy agreement to pay the agreed rental — which the respondent had stopped paying since December 2012 — until the completion date.

Held, allowing the appeal in part and varying the order of the High Court to read that the respondent pay rental until 11 March 2016 subject to the terms of the tenancy agreement:

(1) The High Court judge failed to judicially appreciate the facts and the terms of the tenancy agreement. The parties had clearly agreed under the tenancy agreement that the respondent would have an irrevocable option to renew the tenancy until the SPA was completed or terminated or aborted or such period that the tenant so required, with a fixed monthly rental of RM18,000 subject to the terms and conditions agreed upon between the parties (see paras 20 & 22).

(2) The High Court judge failed to consider that the respondent had been occupying the property since 2010 until the completion of the SPA on 11 March 2016. Despite occupying the property, the respondent had not paid rent since December 2012 contrary to the terms agreed under the SPA and the tenancy agreement. The respondent was obliged by the terms of the tenancy agreement to pay the rental with interest as stipulated under the agreement. The High Court judge erred in ruling that the respondent only needed to pay rental from 31 December 2012–25 November 2013 (see paras 23–24).

(3) By occupying the property rent free, the respondent had clearly benefitted financially from 25 November 2013–11 March 2016. During the said period, the appellant continued to pay all costs relating to the property such as quit rent, assessment, insurance and other related costs. On the factual matrix of the case, injustice had occurred as the appellant had been deprived of the monthly rental due from 25 November 2013–11 March 2016 (see paras 26–27).

[Bahasa Malaysia summary

Pada 6 September 2010, responden telah memasuki perjanjian jual beli ('PJB') dengan perayu untuk membeli tanah perayu dengan bangunan kilang ('hartanah') untuk RM5.4 juta dan telah membayar deposit untuknya. PJB tersebut memperuntukkan bahawa belian itu tertakluk kepada perayu

memperoleh sijil kelayakan ('SK') untuk hartanah itu bersama pelan bangunan yang diluluskan oleh pihak berkuasa relevan dan bahawa sehingga masa perayu memperoleh dokumen-dokumen tersebut, responden memberi lanjutan masa tanpa faedah kepada perayu untuk menyiapkan PJB itu dan responden dibenarkan untuk menyewa hartanah itu dengan sewa bulanan RM18,000 sehingga tarikh siap PJB itu. Selaras dengan PJB itu, pihak-pihak telah menyempurnakan perjanjian sewa yang memperuntukkan bahawa tempoh sewa adalah untuk tempoh empat bulan bermula 1 September 2010 dan berakhir 31 Disember 2010 tetapi tarikh luput tempoh sewa 'shall be automatically extended should the SPA be extended'. Apabila pertikaian timbul antara pihak-pihak berkaitan tarikh siap PJB itu, perayu telah mengeluarkan notis menamatkan PJB itu. Responden mempertikaikan tindakan itu dan memohon kepada Mahkamah Tinggi untuk, antara lain, mengisytiharkan notis penamatan itu terbatal dan tidak sah dan memerintahkan perayu melaksanakan secara spesifik PJB itu atau membayar ganti rugi menggantikan pelaksanaan spesifik. Pada 25 Julai 2013, Mahkamah Tinggi memberikan permohonan responden dan relif-relif yang dipohon. Rayuan perayu kepada Mahkamah Rayuan ('MR') terhadap keoutusan tersebut telah ditolak dan ia dinafikan kebenaran untuk merayu selanjutnya kepada Mahkamah Persekutuan. Oleh kerana MR, apabila ia menolak rayuan, telah memerintahkan perkara-perkara itu diremitkan kembali kepada Mahkamah Tinggi untuk mengendalikan relif-relif berbangkit yang timbul daripada keputusan Mahkamah Tinggi pada 25 Julai 2013, Mahkamah Tinggi sewajarnya mendengar hujah selanjutnya dan pada 13 Januari 2016 memerintahkan: (a) PJB itu disiapkan dalam tempoh satu bulan; dan (b) responden dibayar sewa hanya untuk tempoh dari Disember 2012–25 November 2013 bagi jumlah keseluruhan RM18,000. Mahkamah Tinggi memutuskan bahawa responden hanya bertanggungjawab membayar sewa sehingga tarikh perintahnya memberikan pelaksanaan spesifik (iaitu 25 Julai 2013) juga empat bulan lagi dari tarikh perintah tersebut bagi tujuan PJB itu siap. Tiada sebab diberikan dalam alasan penghakiman untuk menjelaskan kenapa keputusan sedemikian dibuat. Dalam rayuan ini, perayu berhujah bahawa keputusan Mahkamah Tinggi adalah salah kerana memandangkan responden mendiami hartanah itu dari September 2010 sehingga tarikh siap PJB itu pada 11 Mac 2016, ia bertanggungjawab di bawah perjanjian sewa untuk membayar sewa yang dipersetujui — yang mana responden telah berhenti membayar sejak Disember 2012 — sehingga tarikh siap.

Diputuskan, membenarkan sebahagian daripada rayuan dan mengubah perintah Mahkamah Tinggi agar dibaca bahawa responden membayar sewa sehingga 11 Mac 2016 tertakluk kepada terma-terma perjanjian sewa:

(1) Hakim Mahkamah Tinggi gagal memahami secara adil fakta dan terma perjanjian sewa itu. Pihak-pihak jelas bersetuju di bawah perjanjian sewa

bahawa responden mempunyai pilihan yang tidak boleh dibatalkan untuk memperbaharui sewa sehingga PJB siap atau ditamatkan atau dibatalkan atau tempoh tertentu yang dikehendaki penyewa, bersama sewa bulanan tetap RM18,000 tertakluk kepada terma dan syarat yang dipersetujui antara pihak-pihak (lihat perenggan 20 & 22).

(2) Hakim Mahkamah Tinggi gagal mengambil kira bahawa responden telah mendiami hartanah itu sejak 2010 sehingga siap PJB itu pada 11 Mac 2016. Walaupun mendiami hartanah itu, responden tidak membayar cukai sejak Disember 2012 bertentangan dengan terma-terma yang dipersetujui di bawah PJB dan perjanjian sewa itu. Responden bertanggungjawab terhadap terma-terma perjanjian sewa itu untuk membayar sewa beserta faedah sepertimana dinyatakan di bawah perjanjian itu. Hakim Mahkamah Tinggi terkhilaf apabila memutuskan bahawa responden hanya perlu membayar sewa dari 31 Disember 2012–25 November 2013 (lihat perenggan 23–24).

(3) Dengan mendiami hartanah itu tanpa sewa, responden jelas mendapat manfaat secara kewangan dari 25 November 2013–11 Mei 2016. Sepanjang tempoh tersebut, perayu berterusan membayar semua kos berkaitan hartanah itu seperti cukai pintu, taksiran, insurans dan kos berkitan lain. Berdasarkan matriks faktual kes, ketidakadilan telah berlaku kerana perayu terkilan mendapat sewa bulanan yang perlu dibayar dari 25 November 2013–11 Mac 2016 (lihat perenggan 26–27).]

Notes

For cases on appeal against judgment of High Court, see 2(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 940–960.

Appeal from: Originating Summons No 24–150–01 of 2013 (High Court, Shah Alam)

Wong Rhen Yan (Emily Goh with him) (Dennis Nik & Wong) for the appellant.
Soo San San (Gabriel Daniel with him) (Paul Ong & Assoc) for the respondent.

Hasnah Hashim JCA:

INTRODUCTION

[1] The appeal before us is against the decision of the learned High Court judge who had on 13 January 2016 allowed the respondent's consequential reliefs against the appellant and directed the respondent to pay rental for the period from December 2012–25 November 2013 for the total sum of RM180,000 pursuant to the terms of the tenancy agreement dated 6 September 2010 ('the said tenancy').

[2] We had, after perusing the appeal records and upon considering the submissions of counsels, both oral and written, decided unanimously to allow the appeal in part with no order as to costs. Our reasons appear below.

[3] For the purpose of this judgment, parties will be referred to as they were referred to in the High Court.

FACTS OF THE CASE

[4] The defendant was the owner of the land known as Lot No 172 held under Geran No 77097, Seksyen 19, Bandar Rawang, Daerah Gombak, Negeri Selangor together with a factory building erected thereon ('the property'). A sale and purchase agreement dated 6 September 2010 was executed between the defendant as the vendor and the plaintiff as the purchaser ('the SPA') whereby the plaintiff agreed to purchase and the defendant agreed to sell the property upon the terms and conditions as stipulated in the said SPA.

[5] Amongst the terms and conditions of the SPA are as follows:

(a) the total purchase price is RM5.4m;

(b) the deposit paid under the said SPA is RM540,000; and

(c) Item 7 of the Second Schedule of the said SPA stipulates:

> The vendor agrees that it is a salient term that this property is purchased by the purchaser subject to the vendor obtaining the Certificate of Fitness ('CF') together with the building plans approval from the relevant authorities and has undertake (sic) to obtain the said CF and the building plans approval. The vendor further agrees that time will be extended free from interest in the event the vendor has not obtained the said CF and the building plans approval and the purchaser shall ... or within fourteen (14) days of the expiry of the aforesaid extended completion period give an extension period of four (4) months (hereinafter referred to as 'the further extended completion period') in writing to the vendor. If at the expiry of the further extended completion period, the vendor has not obtained the said CF and the building plans approval, the purchaser shall ... or within fourteen (14) days of the expiry of the further extended completion date give a further extended period in writing to the vendor.

[6] Item 7 of the Second Schedule of the said SPA must be read together with Part 7 of the First Schedule which defined 'completion date' as:

> ... Three months from the date of this Agreement Provided Always the Certificate of Fitness for Occupation and Building Plan Approval has been obtained or one (1) month from the date the Certificate of Fitness for Occupational and Building Plan approval has been received by the purchaser's solicitors whichever is later.

[7] The defendant agreed to let the said property to the plaintiff for a monthly rental of RM18,000 per month as stipulated in Item 8 of the Second Schedule of the SPA:

> The vendor agrees to let the said property to the purchaser for a monthly rental of Ringgit Malaysia Eighteen Thousand (RM18,000) upon the execution of this agreement until the completion of this agreement. The purchaser has agreed to provide a security deposit of Ringgit Malaysia Thirty Six Thousand (RM36,000) and Utilities Deposit of Ringgit Malaysia Eighteen Thousand (RM18,000).

[8] The tenancy agreement was drawn up and executed between the plaintiff and defendant on 6 September 2010. Under the tenancy agreement the plaintiff was given the right to occupy the said property and pay a rental of RM18,000 per month to the defendant until the completion of the SPA. Subsequently, however, disputes arose between the defendant and the plaintiff amongst others, with regards to the completion date. The defendant then issued a notice to terminate the said SPA. The plaintiff, on the other hand, disputed the validity of the said termination.

[9] As a result of the disputes between the parties, the plaintiff filed a originating summons ('OS') and sought the following reliefs:

(a) specific performance of the SPA;

(b) a declaration that the termination notice of the SPA issued by

(c) the defendant is null and void and does not bind the plaintiff;

(d) in the alternative, damages in lieu of specific performance;

(e) an order compelling the defendant to pay the shortfall of the redemption sum; and

(f) cost.

THE HIGH COURT JUDGE'S FINDING

[10] On 25 July 2013 the learned High Court judge who heard the arguments in respect of the aforesaid OS allowed the prayers sought and made the following orders:

(a) specific performance of the SPA;

(b) a declaration that the purported termination of SPA by the defendant via letter dated 19 October 2012 is invalid and not binding on the plaintiff;

(c) the defendant was required to pay the shortfall of redemption sum as stated in the current redemption statement together with interest of

8%pa, should the said sum remained unsettled after expiry of ten days from the date of receipt of the notice/demand until full payment is received; and

(d) costs of RM5,000 to be paid by the defendant to the plaintiff.

[11] Dissatisfied with the decision of the High Court judge the defendant filed a notice of appeal in the Court of Appeal on 2 August 2013. The defendant obtained a stay of execution of the said High Court order on 16 May 2014 to maintain the status quo pending disposal of the appeal. The appeal was subsequently heard and dismissed by the Court of Appeal on 8 October 2014. The Court of Appeal ordered that the matter be remitted to the Shah Alam High Court to deal with the consequential reliefs arising under the said High Court order dated 25 July 2010.

[12] The defendant filed a notice of motion on 23 October 2014 for leave to appeal to the Federal Court. The leave of appeal was dismissed by the Federal Court on 4 November 2015. The matter was then remitted to the High Court to deal with the consequential reliefs so ordered.

THE CONSEQUENTIAL RELIEFS

[13] The learned High Court judge after hearing submissions allowed the consequential reliefs against the defendant with costs of RM8,000 on 13 January 2016 and amongst others, gave the following orders:

(a) the completion of the sale and purchase agreement is within one month from the date of order; and

(b) the plaintiff to pay rental only for the period from December 2012–25 November 2013 for the total sum of RM180,000 pursuant to the terms in the tenancy agreement.

THE ISSUES

[14] The issues for determination in this appeal are as follows:

(a) whether the learned High Court judge erred in law and/or in fact in allowing an order to direct the plaintiff to pay the rental only for the period from December 2012–25 November 2013 pursuant to the terms in the tenancy agreement; and

(b) whether the plaintiff was unjustly enriched.

Whether the learned High Court judge erred in law and/or in fact in allowing an order to direct the plaintiff to pay the rental only for the period from December 2012–25 November 2013

[15] Learned counsel for the defendant argued that the High Court judge failed to take into consideration the terms of the tenancy agreement whereby it was agreed that the plaintiff is required to pay rental to the defendant until the completion of the SPA.

[16] Learned counsel for the defendant argued that the High Court judge failed to take into consideration the undisputed fact that the plaintiff has been in occupation of the said property as a tenant even until the completion of the SPA on 11 March 2016. It is also not disputed that the plaintiff has not paid rental from December 2012.

[17] It was the submission of learned counsel for the defendant that since the validity of the said tenancy was not disputed by parties, the tenancy agreement is valid, binding and enforceable.

[18] Learned counsel for the plaintiff, however, contended that subsequent to the termination of the SPA the defendant refused to accept any payment of rental by the plaintiff and had returned the cheque of RM18,000. It was argued by learned counsel for the plaintiff that the plaintiff had in fact continued making monthly rental payments until the disposal of the earlier leave application by the Federal Court on 4 November 2015.

[19] In his grounds of judgment the learned High Court judge accepted the arguments of the plaintiff that the plaintiff should only pay rental until the date of the High Court order directing the specific performance plus the four months from the said court order for the purposes of completion of the contract. Unfortunately, in his grounds of judgment, the learned High Court judge did not give any reasons as to why he had preferred and accepted the arguments of the plaintiff.

[20] We had considered very carefully the submissions of learned counsels, the appeal records and the learned High Court judge's judgment and we were unable, with respect, to agree with the learned High Court's decision. The learned High Court judge failed to judicially appreciate that the facts and the terms of the tenancy agreement.

[21] Clause 1 of the tenancy agreement expressly provides that:

> The landlord agrees to let and the tenant agrees to take a tenancy of the demised premises on an as is where is basis for a term of four months commencing from the *1st day of September 2010* and expiring on *31st day of December 2010* and the expiry date of this tenancy shall be automatically extended should the sale and purchase agreement is extended ...

[22] It is therefore, clear based on the tenancy agreement, that the parties agreed that the tenant will have an irrevocable option to renew the tenancy until the SPA is completed or terminated or aborted or such period that the tenant so requires with a fixed monthly rental of RM18,000 subject to the terms and conditions agreed upon by the parties. In the event the rent is in arrears and unpaid then the defendant can at any time thereafter re-enter upon the property or any part thereof. The tenancy may be determined but without prejudice to the terms under the said tenancy agreement. As the landlord, the defendant can impose interest in the event there is arrears of rental (cl 8 of tenancy agreement).

[23] We agreed with the submission of learned counsel for the defendant that the learned High Court judge failed to take into consideration that the plaintiff had been occupying the property until the completion of the SPA, that is, on 11 March 2016. Despite occupying the property the plaintiff had not paid rent since December 2012 contrary to the terms agreed in the SPA and the tenancy agreement.

[24] Accordingly the learned High Court judge erred in our view when he held that the plaintiff to pay rental from 31 December 2012–25 November 2013. The parties are bound by the terms of both the SPA and the tenancy agreement. The plaintiff had been occupying the property since 2010 and continued to occupy the said property until the payment of the full purchase price in 11 March 2016. Thus, the plaintiff is under obligation by the terms of the tenancy to pay the rental with interest as stipulated in the agreement to the defendant.

Unjust enrichment

[25] Learned counsel for the plaintiff argued that the SPA could not be completed because of the defendant's conduct by filing the appeals in the Court of Appeal and Federal Court. Due to the delay the plaintiff had to occupy the property. It was the submission of learned counsel for the plaintiff that they should not be penalised for occupying the property until the completion of the SPA beyond the original date envisaged.

[26] By occupying the property rent free the plaintiff has clearly benefitted financially from 25 November 2013–11 March 2016. During the said period the defendant continued to pay all costs relating to the property such as quit rent, assessment, insurance and other related costs.

[27] On the factual matrix of the case, in our judgment, injustice has occurred as the defendant had been deprived of the monthly rental due from 25 November 2013–11 March 2016.

A CONCLUSION

[28] We made this finding as it was obvious that on examination of the terms of the SPA as well as the tenancy agreement the plaintiff is obliged to pay the amount owing as rental to the defendant. We allowed the appeal in part with no order as to costs. Paragraph 3 of the High Court order dated 13 January 2016 was varied in that the defendant to pay rental until 11 March 2016 subject to the terms of the tenancy agreement.

Ordered accordingly.

Reported by Ashok Kumar